

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RAHMAN ABDUL BROWN, 05-A-0949,

Plaintiff,

v.

JOHN MARSHALL and JAMES A. MARSHALL,

Defendants.

ORDER
08-CV-12F

By Order entered January 28, 2008, the court granted Plaintiff's motion for leave to proceed *in forma pauperis*, and directed service of the summons and complaint by the U. S. Marshal upon the defendants (Doc. No. 4). On March 27, 2008, prior to an answer being filed by the defendants, plaintiff filed a Request for Default of Judgment ("Plaintiff's motion for a default judgment"), requesting that the Clerk of the Court enter a default judgment against the defendants pursuant to Fed.R.Civ. P. 55(b) for their failure to timely answer the complaint (Doc. No. 5). On August 15, 2008, the defendants filed an answer to the complaint (Doc. No. 6). For the following reasons, Plaintiff's motion for a default judgment is denied.

First, entry of a party's default pursuant to Fed.R.Civ.P. 55(a) is a mandatory prerequisite for entry of a default judgment pursuant to Fed.R.Civ.P. 55(b). See *Dow Chem. Pacific Ltd. v. Rascator Maritime, S.A.*, 782 F.2d 329, 335 (2d Cir. 1986); see also *Gasser v. Infantl Int'l, Inc.*, 03 CV 6413 (ILG), 2008 U.S. Dist. LEXIS 56686, at *18 (E.D.N.Y. July 23, 2008) ("The entry of default is a two-step process. The moving party must first seek an entry of default by the Clerk of Court under Rule 55(a), and thereafter move for default judgment pursuant to Rule 55(b)(1) or (2).") (citation omitted).

Plaintiff herein did not apply for entry of default nor were defaults entered prior to the filing of Plaintiff's motion for a default judgment. Moreover, defendants have answered the complaint and, therefore, plaintiff is not entitled to a default judgment. *Rosa v. Allstate Ins. Co.*, 981 F.2d 669, 679 (2d Cir. 1992) (holding defendant's timely filed answer precluded default judgment)

Based on the foregoing, Plaintiff's motion for a default judgment (Doc. No. 5) is denied.

SO ORDERED.



LESLIE G. FOSCHIO
UNITED STATES MAGISTRATE JUDGE

Dated: April th16, 2009
Buffalo, New York

PURSUANT TO FED.R.CIV.P. 72(a), ANY NOTICE OF APPEAL OF THIS
DECISION AND ORDER MUST BE FILED WITH THE CLERK OF COURT
WITHIN **10 DAYS** OF ENTRY.